

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: CS/SB 764

INTRODUCER: Banking and Insurance Committee, Senator Aronberg and others

SUBJECT: Travel-Limited Life Insurance Coverage

DATE: April 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 764 creates a new unfair or deceptive trade practice provision under the Insurance Code (s. 626.9541, F.S.) which would prohibit life insurers from refusing coverage or otherwise discriminating against an individual solely on the basis of that individual's *past* lawful foreign travel experiences. The bill would further prohibit life insurers from refusing coverage or otherwise discriminating against an individual solely on the basis of that individual's *future* lawful foreign travel plans, unless life insurers demonstrate, and the Office of Insurance Regulation (OIR) determines, that insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel. The committee substitute provides authority for the Financial Services Commission (Governor and Cabinet) to develop rules to implement these provisions and provides authority to the commission to allow for limited exceptions based on national or international emergency conditions affecting public health, safety and welfare and that are consistent with public policy.

Recently, insurance regulators in Florida and in other states have expressed concern about some life insurance companies denying life insurance to individuals based on that individual's past or future travel plans. According to the OIR, such practices may be illegal in Florida under existing law,¹ however, there is currently no specific statutory prohibition against such acts.

The OIR is currently developing a rule to prohibit insurers² from refusing to issue policies, contracts or certificates of insurance (or determining rates) because of the intent of the applicant to engage in future lawful foreign travel or based upon past lawful foreign travel, unless the

¹ Unfair Insurance Trade Practices Act (Part IX of ch. 626, F.S.).

² The rule would apply to life, annuity, accident, disability and health insurers.

insurer can demonstrate that insureds who have traveled or intend to travel are “a separately actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel.”³

Under current law, insurers are subject to fines for nonwillful or willful violations of the unfair or deceptive trade practice provisions (s. 626.9521, F.S.). Also, such entities may be subject to criminal prosecution (i.e., a second degree misdemeanor) for willfully violating the unfair or deceptive trade practice act (s. 624.15, F.S.).

The committee substitute substantially amends the following section of the Florida Statutes: 626.9541.

II. Present Situation:

Regulation of Life Insurance/Current Insurance Practices

Section 624.602, F. S., defines “life insurance” as “insurance of human lives.” Life insurance indemnifies against loss due to the death of a particular person upon whose death the insurance company agrees to pay a stated sum or income to the beneficiary. The transaction of life insurance also includes the granting of annuity contracts, including, but not limited to, fixed or variable annuity contracts, the granting of endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits in the event of the insured’s disability, and optional modes of settlement of proceeds of life insurance.

In Florida, the Office of Insurance Regulation (OIR) has primary responsibility for regulation, compliance and enforcement of statutes related to the business of insurance, and the monitoring of industry markets. The OIR provides regulatory oversight of company solvency, policy forms and rates, market conduct performance and new company entrants to the Florida market. Before any life insurance policy or application form is delivered in Florida the form must be filed with, and approved by, the OIR.⁴ As each filing is received, it is reviewed to determine compliance with applicable actuarial standards, statutory provisions, and administrative rules. Under current law, the OIR is authorized to disapprove any form which, in addition to other reasons, is inconsistent, ambiguous, misleading, or deceptive.⁵

Once an insurer begins selling policies in the state, it is governed by, among other statutes and rules, the provisions of the “Unfair Insurance Trade Practices Act” under s. 626.9541, F.S. The purpose of this law is to define, or to provide for the determination of, practices which constitute unfair methods of competition or unfair or deceptive acts and prohibiting such practices. Insurers can be fined for violating the act (\$2,500 for each nonwillful violation and \$20,000 for each willful violation) and be subject to criminal prosecution (i.e., a second degree misdemeanor) for willfully violating the unfair or deceptive trade practice act (s. 624.15, F.S.).

Further, the unfair trade practice laws authorize the OIR to issue cease and desist orders against insurers that violate those provisions (s. 626.9581, F.S.). If an insurer violates the OIR’s cease and desist order, the OIR may impose a penalty not to exceed \$50,000 (s. 626.9601, F.S.). An

³ Proposed rule 690-125.003, F.A.C.

⁴ Section 627.410, F.S.

⁵ Section 627.411, F.S.

insurance agent that violates this section is subject to suspension or revocation of his or her license and an administrative penalty of up to \$500 or, for willful violations, up to \$3,500, under the authority of the Department of Financial Services (s. 626.681, F.S.).

There are approximately 400 life insurance companies that sell individual and group life products in Florida. In the fall of 2005, the OIR became aware that some life insurance companies were denying life insurance coverage based on possible travel plans to certain foreign countries.⁶ In one instance, a policy was not approved because of an applicant's "potential travel to Israel."⁷ Upon further investigation, the OIR has determined that 48 insurers had filed life or health applications with the OIR that included questions regarding foreign travel.⁸ These carriers have not actuarially justified the use of the questions and have not justified the questions as not being discriminatory, according to an OIR representative. The agency has contacted these insurers to have those questions withdrawn and 39 companies have complied with that request. However, nine carriers have refused to comply and have not withdrawn their questions regarding foreign travel.

To prevent similar foreign related questions from being used in the future, the OIR initiated the rulemaking process to enact an administrative rule to specifically define as an unfair trade practice the exercise of unfair discrimination based on a person's intent to engage in *future* lawful foreign travel or based upon *past* lawful foreign travel. The rule (which also applies to annuity contracts, accident, disability or health insurance) prohibits an insurer from refusing to issue policies (or determining rates) because of the intent of the applicant to engage in future lawful foreign travel or based upon past lawful foreign travel, unless the insurer can demonstrate that insureds who have traveled or intend to travel are "a separate actuarially supportable class whose risk of loss is different from those insureds who have not traveled and do not intend to travel."

The OIR relies on s. 626.9541(1)(g), F.S., a provision in the "Unfair Insurance Trade Practices Act," as the statutory authority for their proposed rule. The subsection reads:

*1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.--
The following are defined as unfair methods of competition and unfair or deceptive acts or practices:*

(g) Unfair discrimination.—

⁶ Letter to Diane Koken, President of the National Association of Insurance Commissioners (August 17, 2005), from, U.S. House of Representative Debbie Wasserman-Schultz, informing Ms. Koken that the Congresswoman's insurer had denied an expansion of life insurance coverage based on her "potential travel to Israel." Letters to Congresswoman Wasserman-Schultz (September 7th and December 9th, 2005), from the OIR Commissioner Kevin M. McCarty, which reported on the progress of the office in prohibiting unfair discrimination in the underwriting of life insurance in Florida. Letters are on file with the Senate Banking and Insurance Committee.

⁷ Some insurers have used the U.S. Department of State's "Current Travel Warnings" as a guide in their determinations. These travel warnings are issued when the State Department recommends that Americans avoid traveling to specified countries. There are presently 25 countries on that list. The State Department's website is: http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html. In addition, the State Department issues Consular Information Sheets for every country in the world with information on matters such as crime, health conditions, entry requirements, and areas of instability.

⁸ Data from OIR submitted on March 15, 2006.

1. *Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for any life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.*

The OIR conducted a public hearing on the proposed rule on March 31, 2006, in Tallahassee and has scheduled the rule to be adopted by the Financial Services Commission (comprised of the Governor and the Cabinet) in April.

Situation in Other States

Presently, five states have addressed the issue of insurers denying life insurance coverage based on an insured's past or future travel plans. These states are California, Illinois, Maryland, New York and Washington.

New York's insurance law (s. 2614) provides that no life insurer shall make any distinction or otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for reasons associated with an applicant's or insured's *past* lawful travel experiences. Maryland (s. 27-208(a)(4)) and Illinois (s. 215 ILCS 5/236(e)) both have similar provisions prohibiting a life insurance company from refusing to insure, refusing to continue to insure, limiting the amount or extent or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely for reasons associated with an applicant's or insured's *past* lawful travel experiences.

States which have passed laws addressing the practice of insurance companies basing their coverage decisions upon applicants' *past or future* travel plans are Washington and California. In 2005, Washington (s. 48.18.570) passed a law which prevents insurance companies from discriminating against travelers for lawful travel by canceling or denying travelers life insurance because of past or future lawful travel. The law does allow a life insurer to exclude or limit coverage of specific lawful travel, or to charge a differential rate for such coverage, when bona fide statistical differences in risk or exposure have been substantiated.

The state to address this issue most recently was California (s. 10111.7). Although California's law is the same as Washington's in what it expressly prohibits, it also specifies that it does not prohibit "an insurer from excluding or limiting coverage under a life insurance policy, or refusing to offer life insurance, based upon lawful travel, or from charging a different rate for that coverage, when that action is based upon sound actuarial principles or is related to actual and reasonably expected experience."⁹

III. Effect of Proposed Changes:

Section 1. States that the act may be cited as "The Freedom to Travel Act."

⁹ The California website is: <http://www.leginfo.ca.gov>.

Section 2. Amends s. 626.9541, F.S., the Unfair Methods of Competition and Unfair or Deceptive Act, by creating a new unfair or deceptive trade provision (“dd”). The legislation would prohibit life insurers from refusing life insurance to, refusing to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual’s *past* lawful foreign travel experiences. The committee substitute would further prohibit life insurers from refusing coverage to, refusing to continue life insurance of, or limit the amount, extent, or kind of life insurance coverage available to an individual based solely on the individual’s *future* lawful foreign travel plans, unless the insurers demonstrate, and the Office of Insurance Regulation (OIR) determines, that insureds who intend to travel are a separate actuarially supportable class whose risk of loss is different from those insureds who do not intend to travel.

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Section 3. Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the OIR, some insurers may have to make new form filings for all affected policy forms and thus will incur a one-time administrative cost for compliance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Representatives with the Florida Insurance Council and the American Council of Life Insurers assert that the committee substitute is too broad and does not allow life insurers to consider such underwriting factors as on-going conflicts or wars within countries, the severing of diplomatic ties with a country by the United States, or the outbreak of contagious diseases that may spread rapidly among countries, which could lead to higher loss experience and increased premiums. It is unlikely that insurers will have actuarial data to support such factors, since insurers will generally not have sufficient loss experience in a particular country, particularly for a situation or condition that has recently occurred. However, the committee substitute authorizes the Financial Services Commission to provide limited exceptions by rule that may allow insurers to underwrite based on such factors.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
